IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 7TH JUNE 2007 / 17TH JYAISHTA 1929

WP(C).No. 21363 of 2005(R)

AGAINST THE ORDER IN IA 1606/2004. IN
OS.245/2004 of MUNSIFF COURT, KARUNAGAPPALLY
.....

PETITIONER:

INDIA CEMENTS CAPITAL AND FINANCE LTD.,
II FLOOR, M.K.V.BUILDINGS, M.G.ROAD,
ERNAKULAM, REP. BY ITS ASSISTANT GENERAL MANAGER
AND POWER OF ATTORNEY HOLDER,
MR.WILFRED G.WILLIAMS.

BY ADV. SRI.P.T.JOSE
SRI.B.PREMNATH (E)

RESPONDENT:

S.SASIKUMAR,
PROPRIETOR, APOLLO DIAGNOSTIC RESEARCH CENTER,
PADANAYAR KULANGARA NORTH,
KARUNAGAPALLY VILLAGE, KARUNAGAPALLY.

BY ADV. SRI.BRIJESH MOHAN
SMT.RESMI G. NAIR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 07/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.21363/2005 R

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE PLAINT IN O.S.245/04 FILED BEFORE MUNSIFF COURT, KARUNAGAPALLY DTD. NIL.**

EXT.P2: **COPY OF THE I.A.1606/04 IN O.S.245/04 FILED BEFORE MUNSIFF COURT, KARUNAGAPPALLY.**

EXT.P3: **COPY OF THE HIRE PURCHASE AGREEMENT DTD. 15/11/01 BETWEEN THE PETITIONER AND RESPONDENT.**

EXT.P4: **COPY OF OBJECTION FILED BY THE RESPONDENT IN THE I.A.1606/04 IN O.S.245/04 FILED BEFORE MUNSIFF COURT, KARUNAGAPALLY.**

EXT.P5: **COPY OF THE ORDER DTD. 5/03/05 IN I.A.NO.1606/04 IN O.S. 245/04 ON THE FILE OF MUNSIFF COURT, KARUNAGAPALLY.**

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 21363 of 2005

Dated this the 7th day of June 2007

JUDGMENT

Ext.P6 order passed by the learned Munsiff on an application submitted by the defendant invoking Sections 5 and 8 of Arbitration and Conciliation Act 1996 seeking an order to reject the plaint is under challenge. The learned Munsiff dismissed the application taking the view that Section 8 of the Arbitration Act does not apply in this case since the suit is for declaration to the effect that the very agreement containing the arbitration clause is void since the same was brought into existence by play of fraud. The issue no longer res intra. Sri.B.Premnath the learned counsel for the petitioner invited my attention to the various decisions such as this court in **Natarajan v. General Manager, Southern Railway (2006 (2) KLT 390), Hindustan Petroleum Corpn. Ltd. v. Pinkcity Midway Petroleums (2003) 6 Supreme Court Cases 503), P.Anand Gajapathi Raju v. P.V.G. Raju (2000) 4 SCC 539)**, **Konkan Rly.**

Corpn. v. Rani constructin (p) Ltd. (2002) 2 SCC 388)

2. A reading of the impugned order will show that the learned Munsiff was not totally unmindful of the provisions of Section 8 which obliges the judicial authority before whom an action is brought in a matter which is subject to an arbitration agreement to refer the parties to arbitration when an application is filed by one party at a point of time not later than submission of his first defence statement. But the learned Munsiff seems to be of the opinion that in the nature of the reliefs sought for in the suit which inter alia was for a decree declaring that the very hypothication agreement contained in the arbitration clause is null and void, the civil court alone can have jurisdiction under Section 9 of the CPC.

3. My attention was drawn by Sri.Premnath to Section 16 of the Arbitration and Conciliation Act 1996 apart from the decisions referred to herein above. Section 16 (1) provides that the arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement. Counsel submitted that the contention that the arbitration agreement relied on by the

respondent itself is illegal itself can be an issue for arbitration by the Tribunal. The above contention has the support of decisions of the Supreme Court and even the language of Section 16 itself.

4. Section 16 (a) & (b) provides that for the purpose of giving a ruling by the arbitral tribunal regarding the existence or validity of the arbitration agreement the arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.

4. It is seen that the reliefs which the petitioner sought for from the judicial authority i.e. the court below that the arbitration agreement containing the arbitration clause is null and void itself can be made on issue before the arbitral tribunal. The rspondent has already entered appearance before the arbitral tribunal and sought time I am informed. Under these circumstances, having due regard to the provisions of the Arbitration and Conciliation Act 1996 as enunciated by the decisions cited at the bar, the order of the court below has to be seen as bad. Ext.P6 order is set aside. The I.A. filed by the

petitioner will stand allowed. The court below will close the suit directing parties to pursue remedies under the Arbitration Act.

The writ petition is allowed. No cost.

PIUS C. KURIAKOSE,
JUDGE.

dpk